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FORMATION OF CORRUPTION ERADICATION COMISSION[1]

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Abstract

The authority includes the authority to take over the investigation of criminal act of corruption being perpetrated by the police officers or the prosecutors. In time police institution or prosecutor's office begins a graft investigation of a criminal act of corruption, it shall be reported to KPK within a period of time no later than 14 working days and shall continuously be coordinated with the KPK. Even if at the same time the police, prosecutors, and KPK are investigating the same corruption, the involvement of the police or the prosecutors must be discontinued immediately. With regard to this fact, this paper reviews descriptively what and how exactly KPK with its extraordinary authority was originally formed. For the purpose of reaching deep understanding over KPK authorities to provide the public with clear description, the background of KPK formation which holds an extraordinary authority is revealed in the present study. This paper uses secondary data in the form of literature and minutes of the meeting on the establishment of law on KPK in the House of Representatives of the Republic of Indonesia (DPR-RI). The result of the study shows that the establishment of the KPK according to Law No. 30 of 2002 was designed to form an independent and super-agency of corruption eradication, with some authorities previously never granted to the police or the prosecutors, but by not eliminating the authority of the police and prosecutors as a part of corruption eradication institutions that have been already existed. In such a position, KPK functioned as a trigger mechanism holder over the police and prosecutors who are considered do not effectively and efficiently execute the action of eradication on corruption.

Keywords: KPK; Authority; Corruption Eradication.

I. INTRODUCTION

A review on the ‘‘state of knowledge” in any area of inquiry requires a clear definition and conceptualization of the topic at hand. We define corruption as the misuse of public office, authority, or resources for private gain, while recognizing that the definitions of many of these terms themselves may be contested (Gans-Morse et al., 2018). Corruption arises from the illieir behaviour of state-appointed bureaucrats who appropriate public funds by misleading the government about the cost and quality of public goods provision (Corrado & Rossetti, 2018).

Corruption is a serious concern for business organizations all over the world (Joseph Joseph et al., 2016). Corruption is a reality in Indonesia and has a significant destructive force (Isra, Yuliandri, Amsari, & Tegnan, 2017). Since the cross-country literature is unable to provide clear evidence on the consequences of corruption on investment, there is a growing need for studies of corruption within single countries, which benefit from better measures of corruption and stronger homogeneity of political, economic, and social conditions (Zakharov, 2017). An element that can affect the level of corruption in a country is the level of economic freedom (López-Valcárcel, Jiménez, & Perdiguero, 2017). Despite the widespread awareness of the negative effects that corruption has on growth and development and the proliferation of international and national anti-corruption laws, corruption remains rampant (Ryvkin & Serra, 2018). Corruption and organized crime are deeply connected phenomena (Gamba, Immordino, & Piccolo, 2018). As power

1. This paper is part of the contents of Chapter III of the Author's Dissertation entitled "Renewal of the Authority of Corruption Eradication Commission in Prospective of more Promising Legal Corruption Eradication", Year 2014, with additions to the Abstract and Pandahuluan sections and minor changes in other sections.

asymmetries are associated with hierarchies, we investigate how costly punishment a□ects the evolution of cooperation in the cases without and with corruption control (Huang, Chen, & Wang, 2018).

Corruption Eradication Commission was established by Law Number 30 Year 2002 concerning Eradication Commission of Criminal Act of Corruption, which hereinafter is referred to as Corruption Eradication Commission (abbreviated as KPK). For the remainder of this paper the law is shortened to "KPK Law". KPK is known as an institution that has extraordinary authority in eradicating corruption in Indonesia. This is different from the authority of the police agency and the prosecutor's office, which also have an authority in eradicating criminal act of corruption, because its role capacity is not as authoritative as KPK.

In carrying out its duties KPK has some prominent authorities, namely to wiretap and record the conversation (Article 12 paragraph (1) letter a of KPK Law), but the police and prosecutor's office do not. Similarly, in conducting confiscation related to the task of investigation, KPK does not require the permission of the head of the district court (Article 47 paragraph (1) of KPK Law), while the police and the prosecutor absolutely require the permit in question when in need execute the same activity. When a person is designated as a suspect by the KPK, it shall be effective as of the date of the determination of the suspect and the special procedures applicable in the framework of the examination of the suspect set out in other laws and regulations shall not apply to the performance of KPK (Article 46 of the Corruption Eradication Commission Law). If the police or the prosecutor's office wants to arrest certain state officials, say, the minister or district head appointed as a suspect, obtaining approval from the president must be done first. Conversely, if the KPK does so, it is directly executed without requiring approval from the president.

Aside from the authorities previously described, KPK is also authorized regarding the supervision of the police and prosecutor in eradicating corruption (Article 6 Sub-Article b of Corruption Eradication Commission Law). In performing such a supervisory duty, KPK is authorized to take over the investigation or prosecution of the perpetrators of corruption being handled by the police or prosecutor (Article 8 paragraph (2) of Corruption Eradication Commission Law).

When a criminal act of corruption takes place and the police/prosecutor's office has initiated an investigation into it, the police/prosecutor office shall notify the KPK at least 14 working days from the initial date of the investigation and shall coordinate it continuously with the KPK 50 paragraph (1) and (2) of Corruption Eradication Commission Law). Furthermore, if KPK has started to handle the investigation of the case, the police and prosecutor's office is no longer authorized to conduct an investigation (Article 50 paragraph (3) of the Corruption Eradication Commission Law). In case an investigation toward a criminal act of corruption is committed simultaneously by the police and/or prosecutors and KPK, further investigation is submitted to the KPK, while the police or the prosecutor's office immediately terminate its activity (Article 50 paragraph (4) of the KPK Law).

Corruption and organized crime are deeply connected phenomena (Gamba et al., 2018). The phenomenon of reality such as the KPK's authority described earlier triggered a new insight for the author of this paper. There is a sense of the things that become a factor encouraging the emergence of curiosity for the community. One may not be intrigued by such a phenomenon due to a limitation of knowledge of the authorities of police, prosecutors and the KPK. One of the things that need to be revealed is that of in relation to the background of KPK institution establishment. For the purpose of reaching deep understanding over KPK authorities to provide the public with clear description, the background of KPK formation which holds an extraordinary authority is revealed in the present study.

II. METHOD

This study is a normative legal research. It was conducted by utilizing conceptual and statute approaches through conducting literature study to obtain data in the form of articles of law governing KPK status and its authority. Scientific studies related to the Corruption Eradication Commission were also collected and used as a comparison with the object studied in the present paper. Data were collected using documentation method. The history of the establishment of the Indonesian Corruption Eradication Commission set forth in the law book was obtained and explained critically through the analysis in this

paper. Data were analyzed using qualitative data analysis method, by selecting the articles of law regulating KPK and its formation, then were explained inferentially. The results are presented with an informal method, covering the data are explained with words, phrases, or sentences.

III.RESULTS AND DISCUSSION

History of Corruption Eradication in Indonesia

Inded since the era of independence of the nation of Indonesia, efforts to eradicate corruption have been done by establishing an agency, team or commission for it. It is noted that, for example in 1958, Coordinating Agency for the Oversight of Treasures in each province has been established, namely an entity which has the authority to administer the property of each person and every institution if there is strong evidence for it, which then High Court is authorized to examine and make decisions on cases to which appeals or cassations cannot be made, whereas their corrupt acts are tried in their respective district courts[2].

Technologies have made corrupt practices that much easier, and in a hyper-competitive environment where jobs are scarce and casual labor common, the temptation to take a shortcut and create a financial benefitis significant (Tierney & Sabharwal, 2017).

In 1967 by relying on Presidential Decree No. 228 of 1967 on December 2, 1967, President Soeharto formed a Corruption Eradication Team under the Attorney General's Office, led by Attorney General Soegiharto. The Corruption Eradication Team was in charge of assisting the government to eradicate corruption by prevention and action[3].

Furthermore, in 1970, President Soeharto formed the Fourth Commission based on Presidential Decree No. 12 of 1970 dated January 31, 1970, with details of duties as follows:[4]

Conducting research and assessment of the policies and results achieved in combating corruption; and to provide consideration to the government regarding the policies that are still required for the eradication of corruption.

Furthermore, by Presidential Instruction No. 9/1977 on September 5, 1977, the so-called Operasi Tertib, more familiar with the term Opstib, was performed to regulate operational deviations, such as illegal levies, official commercialization, and financial wastage[5]. During this time the aplicable law on corruption eradication is the Act No. 3 of 1971 on Eradication of Corruption.

Since the whole of institution and team of corruption eradication had been formed, the crime of corruption was not decreased in quantity but increasingly the practice of corruption, collusion and nepotism is no longer only perpetrated by the people of the state, but also by high officials of state and other parties who did not want to be responsible in producing the welfare of the situation in the joints of the life of society, nation, and state, and endangered the existence of the state[6].

Therefore, after the fall of the New Order, during post-1998 reformation, on the basis of Law No. 28/1999 on the Implementation of a Clean and Free State of Corruption, Collusion and Nepotism, the President established the State Officials Wealth Audit Commission by Presidential Decree Number 127 Year 1999 Date October 13, 1999. This Auditing Commission has a function to prevent corruption, collusion and nepotism practices in the administration of the state, and has the duty and authority to conduct examination on the wealth of state organizers[7].

Law Number 28 Year 1999 on the Implementation of a Clean and Free State of Corruption, Collusion and Nepotism was established because during the previous state administration, i.e. in the period of more than 30 (thirty) years, the state apparatus was considered unable to perform the duties and function optimally, so the process was not working properly. It happened because of the concentration of power, authority, and responsibility in one hand at that time, namely at the time of the President as the Mandate of the People's Consultative Assembly of the Republic of Indonesia (MPR-RI). In addition, the legislator judged that the society had not fully participated

2. Lilik Mulyadi, Tindak Pidana Korupsi Di Indonesia, Normatif, Teoritis, Praktis Dan Masalahnya, Published by Alumni, Bandung, First Edition, First Print, 2007, p. 7 and 13.
3. Presidential Decree Number 228 of 1967 Date 2 December 1967.
4. Presidential Decree No. 12 of 1970 Date January 31, 1970.
5. Presidential Instruction No. 9/1977 On September 5, 1977
6. The Consideration of Law Number 28 Year 1999.
7. Law Number 28 Year 1999.

in carrying out the effective function of social control over the state administration. Actually more precisely, the space and time to exercise social control at that time was not granted by the state authority.

In general explanation of Law Number 28 Year 1999 it is also stated that the concentration of power, authority, and responsibility did not only negatively affect the political aspect, but also the economic and monetary sector, which is characterized by the practice of state administration which favor a particular group and provide opportunities for corruption, collusion and nepotism. The criminal act of corruption, collusion and nepotism is no longer only perpetrated by state organizers with state organizers, but also state organizers with other parties, such as crony families and entrepreneurs, so that it destroyed the joints of life in the community, nation and state, and endangered the existence of the state.

Grounded the facts, in the context of the rescue and normalization of national life according to the demands of reform, there is an indispensable need of common vision, perception, and mission of all state and community organizers. The common vision, perception and mission, however, must be in line with the demands of the people's conscience who desire the realization of state organizers capable of carrying out their duties and functions in a serious, responsible sense, effectively, efficiently, free from corruption, collusion and nepotism, as mandated by Decree of MPR-RI Number XI/ MPR/1998 on the Implementation of a Clean and Corrupt-Free State, Collusion and Nepotism. On the basis of such thinking, the law on the administration of a clean and free state of corruption, collusion and nepotism is established and enacted.

Subsequent to the enactment of Law Number 31 Year 1999 concerning the Eradication of Corruption, which supersedes Law Number 3 Year 1971, the Government issued Government Regulation Number 19 Year 2000 regarding the Combined Team for Criminal Corruption Eradication, which coordinates the investigation and prosecution of criminal offenses corruption that proves very difficult to execute. The Joint Team is under the coordination of the Attorney General consisting of elements: the police, the prosecutor's office, the relevant agencies, and the community elements, which are formed with the aim of building the integrity, openness and public accountability in combating corruption[8].

The revocation of Law Number 3 Year 1971 on the Eradication of Corruption was caused caused by that the legislators had examined that the law was no longer in accordance with the development of legal requirement for the society during the post-reformation in 1998, so that an amendment is necessasry to be established by replacing the afformentioned-existed law with new one that is expected to work more effectively in preventing and combating criminal acts of corruption.

There are several new provisions in Law Number 31 Year 1999 which were not contained in Law Number 3 Year 1971, such as:

It formulates of corruption as a formal offense, which is highlighted by the word "capable" in Article 2 and Article 3 before the phrase "harming the state finance or state economy". So that for the existence of corruption crime, the impact should not trigger the occurrence of a loss for the state finance or the state economy in a real word, but may only be an action that has potential to bring about loss for state finance or state economy alone. It is also affirmed with the formulation of Article 4 and general explanation which states that the financial loss return of state or economy of the country does not abolish the provisions on the criminalization of the perpetrators of criminal act of corruption as referred to in Article 2 and Article 3.

It contains the provision of a corporation as a new subject of eradication of criminal corruption (Article 1 point 3); it determines a minimum criminal thread; there is provision of capital punishment (Article 2 point (2); it contains additional criminal provisions and the provision of payment of replacement money for the convicted person (Article 18); there is provision of confiscation of third-party assets (Article 19); and it regulates the provision that free judgement in criminal act of corruption does abolish the right to claim financial loss of the state (Article 32).

The Formation of Corruption Eradication Commission

In Law Number 31 Year 1999 on Eradication of Corruption, it is mandated in Article 43

8. See Government Regulation Number 19 Year 2000.

paragraph (1) that within two years, since the enactment of the law, the Corruption Eradication Commission is established. Subsequently, based on the mandate of Article 43 Paragraph (1) of Law Number 31 Year 1999, the legal policy for the establishment of the Corruption Eradication Commission is stipulated by Law Number 30 Year 2002, which with the establishment of this KPK, Law Number 28 Year 1999 is, then, merged into the KPK and becomes the Prevention Division within the KPK (Article 69 of Law Number 30 Year 2002).

The implying background to the enactment of the Law on the Establishment of the Corruption Eradication Commission (KPTPK) is, in addition to being mandated by Law Number 31 Year 1999, also because criminal act of corruption is already an extraordinary crime. The development of the *modus operandi* of the act of corruption in Indonesia is very rapid and significant compared to the relatively low range of its law enforcement output. The results of PERC's research[9] in Hong Kong show that corruption in Indonesia is ranked first in Asia and ranked third in the world. The widespread development of corruption and the resulting misery for the Indonesian people is an adequate rationale for ensuring that today criminal act of corruption is a violation of the economic and social rights over Indonesian nation. The quality, quantity and intensity of such corruption cannot be eliminated in the usual ways, but must be eradicated with extraordinary strategies. The extraordinary strategies meant here are the criminal act of corruption must be based on general principles, namely legal certainty, openness, accountability, public interest, and proportionality. In addition to adhering to these principles, the ways in which they should also be based on specific principles, namely: independence; *lex specialist derogate legi generalist*; *lex primum remedium derogate legi ultimum remedium*; non impunity; inadmissinility (unwillingness principle and inability principle); trigger mechanism; take over mechanism; and limited *ne bis in idem*, all of which have been formulated in the law[10].

Based on these principles, the existence of KPTPK and its authority indicates its function as the supreme agency (super agency) in eradicating the acts of corruption in Indonesia. This is manifested in several provisions, among others:

The Chairman of the Commission has the status of a high state official; KPTPK should be an independent and accountable agency directly to the public; KPTPK has extented powers including conducting its own investigation, and prosecution, taking over the authorities of investigating, and prosecuting (from the police and the prosecutor's office); KPTPK has the authority to arrest or detain high officials of the state without having to request the President's permission; and KPTPK has the authority to suspend the account of the suspect or defendant (suspect or defendant of corruption crime-writer) without the permission of the Governor of Bank Indonesia, but make report of it[11].

With its independence and authority under the law, KPTPK is expected to become an authoritative and integrity institution and the only institution of last hope and trust for Indonesian society in combating corruption, both for the present and the future. This institution is also expected to erode the trust of corruptors who often take refuge and benefit from the principle that corruption is a "low risk and high profit activity".

The establishment of the KPK policy was made because the legislators as the policy makers considered that the eradication of criminal acts of corruption that occurred until the year 2002 can not be implemented optimally. Therefore, the eradication of corruption should be increased professionally, intensively and sustainably, since corruption has harmed state finance, the state economy, and hampered national development. In addition, government agencies dealing with corruption cases have not functioned effectively and efficiently in eradicating corruption, so it is deemed necessary to establish an independent Corruption Eradication Commission (KPK) which is also assessed, with the duty and authority to eradicate corrupt acts, which is in accordance with the mandate of Article 43 of Law Number 31 Year 1999 concerning the Eradication

9. PERC is an abbreviation of Political & Economic Risk Consultancy, Ltd., a consulting agency established in 1976, headquartered in Hong Kong, conducting political and economic research and analysis in ASEAN, Greater China and South Korea. Some of the world's leading companies and financial institutions regularly use PERC services to assess key trends and critical issues to identify growth opportunities, and to develop effective strategies to capitalize on those opportunities.
10. Romli Atmasasmita, Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional, Published by CV. Mandar Maju, Bandung, Edition I, 2004, p. 14-15.
11. Ibid.,. 15.

of Corruption as amended by Law Number 20 Year 2001 regarding Amendment to Law Number 31 Year 1999[12].

The drafting process of the Law on the Commission began with the establishment of a Team for the Preparation of the Establishment of the KPK in 1999 by the Department of Justice and Human Rights of the Republic of Indonesia with the assistance of ADB (Asian Development Bank). Then, the team under Romli Atmasasmita conducted a comparative study to Malaysia, Singapore, Hong Kong and Australia, and deeply studied the concept of establishing the same Commission in these countries, both on the history of its formation and its financing[13]. The result of the comparative study shows that the existence of the institution (an agency eradicating corruption-writer) is a real and urgent need, and the role of the wider community is crucial to the success of this institution in addition to strong commitment from the government to succeed eradication of criminal act of corruption[14].

The end of the comparative study and the deepening of the materials obtained by the Team reached a conclusion that the Indonesian KPK is not comparable with the KPK in other countries, due to the geographical differences, the history of the criminal justice system, and the criminal law system adopted, the efficiency side and the effectiveness and difference of the culture of the community[15].

Subsequently, by Letter Number: R.13/PU/ VI/2001 dated June 5, 2001, the then President of the Republic of Indonesia, Megawati Soekarnoputri, submitted the Draft Law of the Republic of Indonesia on the Corruption Eradication Commission to the House of Representatives (DPR- RI) to be discussed. Following up on the letter from the President, then Commission II (DPR-RI) made the List of Problem Inventory (DIM) based on input from various community and related institutions, both delivered through Hearings (Hearings), Public Hearing, Documents and website of Commission II of DPR-RI.

Furthermore, on 26 November 2001, a working meeting with the Minister of Justice and Human Rights was conducted with a general discussion about the Bill on Corruption Eradication Commission (KPK), followed by the formation of Working Committee (Panja) was assigned to discuss intensive and in-depth material that has not been discussed in the workshop[16].

In the discussion with Commission II DPR-RI, there are 10 issues that are considered crucial to be dealt with concerning the Draft of the Law (RUU) on this KPK, namely[17]:

The draft law on the KPK was originally comprised of 9 chapters and 60 (sixty) articles but after being discussed and refined, it is amended into 12 chapters and 73 chapters, with a new chapter, Chapter III on the Procedures for Reporting and Determining the Status of Gratuities, and Chapter VII on Judicial Review, and Chapter XI on Transitional Provisions;

With regard to the duties of the Corruption Eradication Commission (KPK) covering the tasks of coordination, supervision, investigation, and prosecution, and taking actions to prevent corruption, the Commission II of DPR-RI views the need for other authorities granted to the KPK to prevent criminal acts of corruption as early as possible, by giving the authority to monitor the implementation of state administration;

In the case of taking over the authorities of investigating and prosecuting the acts of corruption, there has been considerable debate with arguments and thoughts based on deep consideration, the Commission II of DPR-RI finally agreed that all investigation and prosecution actions can be taken over by KPK throughout the case of legal process not completed at the time of the establishment of the KPK;

In the event that the Advisory Team serves to provide advice and judgment to the KPK and to supervise the implementation of KPK's duties and authorities, it is feared that it will hamper the performance of the KPK and may also lead to corruption, collusion and nepotism (KKN) practices and disrupt its independence. DPR-RI members agreed to eliminate the oversight function of the KPK Advisory Team;

12. The Consideration of Law Number 30 Year 2002.
13. Ibid., p. 30-31.
14. Ibid., p. 3-4.
15. Ibid., p. 31.
16. Minutes of the 20th Plenary Session of the House of Representatives of the Second Session Period of 2002-2003, pp. 12.
17. See the Minutes of the 20th Plenary Session of the House of Representatives, Session II of the 2002-2003 Session Year, p. 13-15.

In order to maintain the dignity and authority of the KPK and to highlight that the KPK's duty is as an "extraordinary" task, it is also stipulated that the KPK leadership may be dismissed if it becomes a defendant for committing a criminal offense and may be suspended if it turns to be a criminal suspect;

In order to avoid the opportunity of new KKN at KPK institution, the Leader or KPK Official is prohibited to relate directly or indirectly to the suspect or other parties who have relationship with corruption cases handled by Corruption Eradication Commission, for any reason;

Considering that in the event that the hearing in the court is not a series of KPK's authority, it is agreed that Chapter VI titles should be refined, which was originally formulated as "Investigation, Prosecution and Examination in Court Session" amended into "Investigation and Prosecution". While related to the examination in the court, it is regulated separately in Chapter VII covering Articles 53 to 62, and also agreed on several matters, such as the term "Special Tribunal" which was amended into "Corruption Court";

In the case of prosecution duties at the court, the Commission II DPR-RI together with the Government agreed that the prosecution's assignment shall be submitted to the Public Prosecutor which is selected and assigned by KPK. The Public Prosecutor in this case is the prosecutor as referred to in Law Number 5 Year 1991 regarding the Attorney of the Republic of Indonesia;

In order to accommodate the arrangement of gratuities as mandated in Article 12B of Law Number 20 Year 2001 on the Amendment to Law Number 31 Year 1999 concerning Eradication of Corruption, it is agreed that matters relating to gratification shall be regulated specifically in Chapter III on Procedures reporting and Determination of Status of Gratuities in the Draft Law;

It was agreed to formulate the transitional provisions in its own chapter, namely Chapter XI, Article 68 and 69, which regulate, among others:

Article 69:

With the establishment of the Corruption Eradication Commission, the State Administration of Wealth Audit Commission as referred to in Law Number 28 Year 1999 concerning the Implementation of a Clean and Free State of Corruption, Collusion and Nepotism, becomes a part of the duties of Prevention Division of the Corruption Eradication Commission

The State Asset Wealth Audit Commission as referred to in paragraph (1) shall continue to perform its functions, duties and authorities until the Corruption Eradication Commission carries out its duties and authorities under this Act.

This integration is based on the idea to further strengthen the authority of KPKPN institution in carrying out its duties. Additionally, it is also based on the thought that there is integrity and to avoid overlapping authority of institution/ commission in eradicating corruption crimes, considering KPK is incharged to execute the task of investigation, examination and prosecution, and the prevention of criminal acts of corruption.

In the end, the Bill on KPK which initially consisted of 9 chapters, 60 articles, developed into 12 (twelve) chapters and 73 (seventy three) chapters has after having had been taken into a discussion at the Commission II of DPR-RI, due to the addition of a new chapter, namely Chapter III on the Procedures for Reporting and Determination of Status of Gratuities; Chapter VII on Examination in Court Session; and Chapter XI on Transitional Provisions, in the Plenary Session of the House of Representatives on 29 November 2002 approved to be passed into law which is known as Law Number 30 Year 2002 on Corruption Eradication Commission (KPK).

In his speech on the approval of the Bill on the KPK, the government represented by the Minister of Justice and Human Rights of the Republic of Indonesia, Yusril Ihza Mahendra, in front of the DPR-RI Open Plenary Meeting on November 29, 2002 said that through the Draft Law it is agreed that corruption is no longer a common crime but an extraordinary crime, since it has usurped the social and economic rights of the people. Similarly, in the efforts of eradicating it. It is a necessity that we take extraordinary means, because conventional law enforcement in the fight against corruption proves to contain many obstacles and constraints. In the Draft Law, a Corruption Eradication Commission is established which has wide and independent

powers, which in carrying out its duties and authority is free from any power[18].

The Minister of Justice and Human Rights of the Republic of Indonesia in his speech also added several things, as follows:

Whereas the newly agreed bill, if it later becomes the applicable law, is part or subsystem of the national legal system being built, in addition to further strengthening the policy of eradicating corruption that has been laid down, among others, in the Decree of the People's Consultative Assembly (MPR) Number XI/ MPR/1998 on the Implementation of a Clean and Free Country of Corruption, Collusion and Nepotism, Law Number 28 Year 1999 on the Implementation of a Clean and Free State of Corruption, Collusion and Nepotism, and Law Number 31 Year 1999 on Eradication Corruption as already amended by Law Number 20 Year 2001.

The cruciality of KPK's duties and authorities arrangement lies essentially on the main issue of how to position the KPK within the framework of existing law enforcement systems, without the need to create confusion and overlap with the duties and authorities of other law enforcement agencies. After a lengthy and intensive discussion, KPK's existence does not eliminate the duties and authorities of other law enforcers, even the KPK can set up a strong networking by treating the existing law enforcement institutions as a conducive counterpartner, so that corruption eradication can be carried out efficiently and effectively. Besides, the KPK can function to trigger and empower the existing institutions (trigger mechanism) in eradicating corruption, and with the authority to supervise, then for some reason, the Commission can take over the investigation, examination and prosecution of corruption committed by law enforcement agencies others.

To prevent confusion and simultaneously to avoid overlapping of authority with police and prosecutor agencies, corruption cases that are the jurisdiction of KPK are criminal acts of corruption that:

Involves law enforcement officers and state administrators, as well as others who are related to corruption committed by law enforcement officers or state administrators, obtains attention that disturbs the public[19]; and/or concerns the state loss of at least Rp 1,000,000,000,00 (one billion rupiah).

The appointment of KPK membership and the wide implementation of KPK's duties and authority must still be based on good governance principles which include principles of legal certainty, transparency, accountability, public interest, and proportionality. With regard to this latter matter, any person who feels his or her interests are harmed by the KPK may file a lawsuit.

Specific ways of handling and settling corruption cases that have been agreed upon as extraordinary crimes do not stop at the level of investigation, examination and prosecution (LikDikTut), but are determined on an ongoing basis until the examination stage of the trial. It is assessed less useful if the extraordinary ways in eradicating corruption are limited to the LikDitTut stage. Therefore, the Draft of Law is explicitly stipulated in the provisions of special procedural law for each stage of the investigation, which is different from those applicable to other ordinary crimes. Such provisions may be encountered, inter alia, in the regulation of the KPK's authority in conducting LikDikTut, the provisions concerning the establishment of a corruption court which is authorized to examine and decide upon the criminal act of corruption whose prosecution is conducted by the KPK, and the provisions concerning the composition of the judges, consisting of two judges of the district court and 3 ad hoc judges. The composition of

18. Lihat Sambutan Menteri Kehakiman dan HAM R.I. tanggal 29 November 2002 atas disetujinya RUU tentang KPK, p. 4.
19. No explanation or definition of what constitutes a corruption act that receives attention that disturbs the public, or who has the authority to interpret a criminal act of corruption is gaining attention that disturbs the public. For this matter Romli Atmasasmita said that the inclusion of a sentence that reads: "gets attention that disturbs the community", because in accordance with the consideration of Law Number 20 Year 2001 on the Amendment of Law Number 31 Year 1999 on the Eradication of Corruption, states that widespread and systematic criminal corruption is also a violation of social rights and economic rights of society, and therefore corruption crime can no longer be classified as a common crime, but has become an extraordinary crime, as well as in the eradication effort can no longer be done normally, but it is demanded in extraordinary ways. By referring to the phrase "violation of the social rights and economic rights of the community", it is the right of the community to participate in the eradication of criminal acts of corruption. In Chapter V on community participation in Law Number 31 Year 1999, it is stated that the public is entitled to obtain information, convey information, and even request reports. That's why it inserted the phrase: "get the attention that is troubling society" is. There is no definite measure of this, but according to Romli Atmasasmita, the measure is in the contents of the relevant chapter, for example the response of the community will be different if the perpetrators of corruption are committed by ordinary people (see Romli Atmasasmita's description as an expert in the law review case Number 30 of 2002 on KPK, in Decision of Constitutional Court Number: 012-016-019 / PUU-IV / 2006, pp. 176-177).

this panel of judges applies to every level of case hearing; first level, appeal level, and cassation. In the draft of this law, the deadline to be considered in the settlement of cases of corruption at each level of examination in court is also determined.

Finally, on December 27, 2002 the Draft Law on the KPK was passed into law, and after being enacted on the same date, that is, on December 27, 2002, it was promulgated in the State Gazette of the Republic of Indonesia of 2002 Number 137 under the name of the Republic of Indonesia Indonesia Number 30 Year 2002 on Corruption Eradication Commission.

IV.CONCLUSION

From the discussions in the House of Representatives and the speech of the Minister of Justice and Human Rights after the approval of the Bill on the KPK into law, it can be seen that the KPK's formation policy in the law is designed to form an institution corruption eradication who is independent, as the supreme agency in eradicating corruption in Indonesia, without eliminating the authority of the existing corruption eradication agencies, the police and the prosecutor's office. Of the three institutions of corruption eradication, the Commission is functioned as a trigger and empowerment for the police and prosecutors (trigger mechanism) in the eradication of corruption that is considered inoptimal, effective and efficient in making efforts to eradicate corruption.

Involves law enforcement officers, state officials, and others with regard to corruption committed by law enforcement or state officials; gains attention that is troubling the public; and / or concerns the state losses of at least Rp 1,000,000,000, oo (one billion rupiah).

In order to avoid overlapping authority in eradicating corruption between newly formed institutions (KPK) and pre-existing institutions (police and prosecutor), the KPK's authority is designed to be limited only to handle cases of corruption by three qualifications as mentioned in the previous description, that is the one which:

In addition, for the KPK from the outset, a special procedural law was created which was different from those applicable to other ordinary crimes, in contrast to the procedural law applicable to the police and prosecutor's office in conducting investigations, examinations and prosecutions on corruption. These special provisions can be found in the regulation of the KPK's authorities, such as the authority to intercept and record conversations, to call and detain suspects of corruption who are regional heads or state officials without requiring the consent of the president or their bosses, including for confiscation in the handling of corruption without the permission of the court chairman as applicable to the police and the prosecutor's office, nor to stop the investigation of criminal acts of corruption.

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